IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.78 OF 2005

Commissioner of Central Excise. Belapur .. Appellant
V/s
M/s.National Organics Chemical Ind.Ltd. .. Respondent

Mr.S.M.Shah with Mr.Y.R.Mishra for the Appellant.
Mr.Prakash Shah i/by PDS Legal for the Respondent.

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 23.01.2006.

P.C.:

1. Heard the learned Counsel for the parties. Mr.Shah the learned Counsel for the Appellant tenders the draft proposed question of law, and seeks leave to amend. The said draft proposed question of law is taken on record and marked 'X' for identification. Leave is granted to amend the appeal as per the said draft proposed question of law. Amendment to be carried out within a period of two weeks from today.

2. In the present case the goods manufactured by the assessee were cleared for testing without payment of excise duty. By the order in Original the demand of excise duty in respect of the said was confirmed with penalty. The Commissioner (A) set aside the demand and penalty based on the law laid down by the CEGAT in the case of **Bhansali Engg.Polymers Ltd. V/s.CCE, Indore - 1999 (114) ELT 94.** On further appeal filed by the revenue, the Tribunal, in view of the decision of the Hon'ble Supreme Court in the case of **ITC V/s UOI - (151) ELT 246 SC,** confirmed the duty and deleted the penalty.

Since the decision of CEGAT in the case of **Bhansali Engg.Polymers Ltd. V/s. CCE, Indore**, at the relevant time was in favour of the assessee, the Tribunal was justified in deleting the penalty. Having regard to the facts and circumstances of this case, we do not find any merit in the Appeal. Appeal therefore stands dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)